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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,158

09/18/2006

Rakesh Ratnam

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20529

7590

07/16/2010

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EXAMINER

SCHMIDTMANN, BAHAR

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

07/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,158	Applicant(s) RATNAM ET AL.	
	Examiner BAHAR SCHMIDTMANN	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-58 is/are pending in the application.
- 4a) Of the above claim(s) 26-47 and 54-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-53, 57 and 58 is/are rejected.
- 7) ☒ Claim(s) 48-53, 57 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/09/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This application is a 35 U.S.C. § 371 National Stage Filing of International Application No. PCT/IN04/00142, filed 20 May 2004, which claims foreign priority under 35 U.S.C. §119(a-d) to PCT/IN04/00064, filed 19 March 2004 and 563/MMU/20004, filed 17 May 2004.

The preliminary amendments filed 10 May 2010 is acknowledged. Claims 26-58 are pending in the current application. Claims 26-47 and 54-56 are withdrawn as being drawn to a non-elected invention. Claims 48-53, 57 and 58 are examined on the merits herein.

Election/Restrictions

Claims 26-47 and 54-56 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10 May 2010.

Applicant's election with traverse of Group II, claims 48-53, 57 and 58 in the reply filed on 10 May 2010 is acknowledged. The traversal is on the ground(s) that "the special technical feature that is shared between Groups I and II is "chlorinated sucrose... at least a part of which has particles that are amorphous or noncrystalline" and that Carolyn et al. teaches powders obtained by freeze drying (i.e. directly drying) aqueous solutions having other constituents in addition to sucralose such that it is different from pure sucralose solution. This is not found persuasive because the

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instant claims do not preclude additional impurities and product-by-process claims do not have patentable weight.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claims 48-53, 57 and 58 are objected to because of the following informalities:

These claims are objected to for depending on withdrawn claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112, first paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 48-53, 57 and 58 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for crystallizing the “substantially pure form” (which would need to be clarified to overcome possible 112, 2nd paragraph indefiniteness) of sucralose and sucralose-6-acetate and drying said sucralose and sucralose-6-acetate by agitated thin film drying, does not reasonably provide enablement for any and all types of **direct drying or conventional spray drying** of the “substantially pure form” of sucralose and sucralose-6-acetate. The specification does not enable any person skilled in the art to which it pertains, or with which it is most

nearly connected, to make and use the invention commensurate in scope with these claims.

The Applicant's attention is drawn to *In re Wands*, 8 USPQ2d 1400 (CAFC1988) at 1404 where the court set forth eight factors to consider when assessing if a disclosure would have required undue experimentation. Citing *Ex parte Forman*, 230 USPQ 546 (BdApls 1986) at 547 the court recited eight factors: (1) The nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the predictability or unpredictability of the art; (5) the breadth of the claims; (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary.

(1) The nature of the invention:

The nature of the invention is drawn to crystallizing or using agitated thin film drying (AGTF) sucralose to obtain a solid powder form of said compounds, wherein at least a part of which is amorphous or non-crystalline.

(2)/(4) The state of the prior art/ The predictability or unpredictability of the art:

Carolyn et al. (US Patent No. 7,018,667, cited in previous Office Action) discloses that sucralose by itself decomposes at high temperatures, i.e. 125 °C (column 1, lines 13-18), which are temperatures at which spray-drying is performed. Carolyn et al. teaches that spray drying can be utilized when sucralose is combined with 50 weight percent maltodextrin, which raises the temperature at which sucralose decomposes to 145 °C (column 1, lines 19-24), making spray drying possible.

Additionally, Applicant has argued that the Carolyn et al. reference combines sucralose with additional ingredients such as maltodextrin, sodium saccharin, etc. which may have different properties than as instantly claimed.

It appears that in light of the prior art and Applicant's own arguments, directly drying "substantially pure" sucralose is highly unpredictable. Carolyn et al. essentially teaches that spray drying sucralose itself will lead to decomposition of the material and that it must be combined with other ingredients to stabilize the compound. However, the instant invention appears to be drawn to "substantially pure" sucralose that is not further mixed with other ingredients. In order to directly dry sucralose without mixing the compound with other ingredients, it appears that Applicants specification describes the process of using AGTF as the drying procedure. Because this specific drying method is critical to the claimed invention, it should be included in the claims. Although, it should be noted that the instant claims do not preclude the mixing of sucralose with other additional ingredients prior to direct drying and that the processes described in product-by-process claims do not necessarily have patentable weight.

The claimed invention is also unpredictable in light of Applicant's arguments, wherein it is stated "the process of presently pending claims 26 to 47 is a process of "drying" (which is different from crystallization)", (see p.15 of remarks). If this is true, then the recitation of "microcrystalline particles directly from a process of crystallization by direct drying" in instant claim 50 seems contradictory. Please see the 112, 2nd paragraph rejection below.

(3) The relative skill of those in the art:

The relative skill of those in the art is high.

(5) The breadth of the claims:

The breadth of the claims is drawn to sucralose, its intermediates and derivatives obtained by the process of directly drying chlorinated sucrose.

(6)/(7) The amount of direction or guidance presented/ The presence or absence of working examples:

The instant specification provides an example of first crystallizing the obtained sucralose followed by processing via ATFD (see p.19-20, steps 3.2 and 3.3). The products obtained after ATFD are then re-extracted, purified by column chromatography and re-purified again via ATFD drying or for conventional crystallization (p.20, steps 3.4 and 4).

(8) The quantity of experimentation necessary:

In order to practice the invention with the full range of all possible treatment methods beyond those known in the art, one skilled in the art would undertake a novel and extensive research program to show that any and all derivatives of sucralose and intermediates to make sucralose can be "directly dried" by any numerous types of drying procedures without decomposition. Because this research would have to be exhaustive, and because it would involve such a wide and unpredictable scope of drying pure sucralose, it would constitute an undue and unpredictable experimental burden.

Genentech, 108 F.3d at 1366, states that, "a patent is not a hunting license. It is not a reward for search, but compensation for its successful conclusion." And "patent protection is granted in return for an enabling disclosure of an invention, not for vague intimations of general ideas that may or may not be workable."

Therefore, in view of the Wands factors, as discussed above, particularly the breadth of the claims, Applicants fail to provide information sufficient to practice the claimed invention for drying pure sucralose or sucrose-6-acetate.

Claim Rejections - 35 USC § 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 47-53, 57 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I. The recitation of "its intermediates, its derivatives of process of claim 26" in claims 47-53, 57 and 58 herein indefinite. It is unclear what intermediates or derivatives are produced from the drying process of claim 26. It is unclear why the drying process would alter the chemical structure of the claimed compound "1',6'-dichloro-1'6'-dideoxy- β -D-Fructo-Furanosyl-4-Chloro-4-Deoxy- α -D-Galactopyranoside" to produce "intermediates" and "derivatives", it is unclear what these chemical structures would be. Additionally, claim 57 is replete with indefinite language and phrases that renders a high level of uncertainty as to what is actually being claimed.

The Merriam-Webster's Online Dictionary defines "derivative" as "a chemical substance related structurally to another substance and theoretically derivable from it" (PTO-892, Ref. U).

Hence, one of ordinary skill in the art could not ascertain and interpret the metes and bounds of the patent protection desired as to "derivative of the process of claim 26" herein. One of ordinary skill in the art would clearly recognize that a "derivative of claim 26" would read on those compounds having any widely varying groups that could be used to substitute the compound. Any significant structural variation to a compound would be reasonably expected to alter its properties; e.g. physical, chemical, physiological effects and functions.

The only chlorinated "sucrose" compounds described are sucralose-6-acetate and its deacylated form, presumably sucralose (p.21 appears to incorrectly recite the chemical names of the compounds produced, lines 16-20, compare with drawing figure 1 and instant claims).

II. The recitation of "microcrystalline particles directly from a process of crystallization by direct drying" in instant claim 50 renders the claim herein indefinite. Applicant has argued in response to the restriction requirement that the process of presently pending claims 26 to 47 is a process of "drying" (which is different from crystallization)", (see p.15 of remarks). If in fact crystallization and drying are not synonymous with each other, then it is unclear how crystallization is performed by direct drying.

III. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since

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the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 49 recites the broad recitation "average particle size of 8 micron or less", and the claim also recites "within a range of 5 micron to 8 micron" which is the narrower statement of the range/limitation. Claim 49 recites the broad recitation "residual moisture content of 10% or less" and the claim also recites "more particularly less than 5%" and "still more particularly less than 0.5%", which is the narrower statement of the range/limitation. This is repeated in claim 51, limitations of i) and iii).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 48-53, 57 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Song et al. (US Patent No. 5,227,182, cited in PTO-892).

Song et al. discloses a solid powder form of sucralose (1',6'-dichloro-1'6'-dideoxy- β -D-Fructo-Furanosyl-4-Chloro-4-Deoxy- α -D-Galactopyranoside) that is agglomerated (broadly and reasonably interpreted as non-crystalline), (column 4, lines 66-68 to column 5, lines 1-5). Song et al. discloses a solid form can then be ground to a specific particle size (column 5, lines 50-54). Song et al. discloses sucralose can be dried and added to chewing gum (claims 1, 7 and 18). Song et al. discloses sucralose can be spray-dried (broadly and reasonably interpreted as direct drying), wherein the sucralose is mixed with maltodextrin (figure 3).

Song et al. does not expressly disclose the physical property limitations including average particle size (instant claims 49-52), moisture content (instant claim 49, 51), shape (instant claim 51). Because the Song et al. reference discloses directly drying a solution comprising sucralose, there is a reasonable expectation that the solid powdered form of sucralose inherently possesses the instantly claimed physical properties.

See MPEP 2113, for product-by-process claims: "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior

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product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

The Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether or not applicants' solid powder form of sucralose differs, and if so to what extent, from the solid powder form of sucralose discussed in Song et al. Accordingly, it has been established that the prior art product, which are produced in a substantially similar manner as instantly claimed, demonstrates a reasonable probability that it is either identical or sufficiently similar to the claimed product and that whatever differences exist are not patentably significant. Therefore, the burden of establishing novelty or unobviousness by objective evidence is shifted to applicants.

Furthermore, the Office is not equipped to conduct experimentation in order to determine whether or not the composition of Song et al. comprises each and every physical property recited in claims 48-53, 57 and 58. Accordingly, it has been established that the prior art composition, which is made in the same manner as the instant composition and, according to Song et al., demonstrates a reasonable probability that it is either identical or sufficiently similar to the composition in claim 48 that whatever differences exist are not patentably significant. Therefore, the burden of establishing novelty or unobviousness by objective evidence is shifted to applicants.

Merely because a characteristic of a known compound is not disclosed in a reference does not make the known compound newly patentable. See MPEP 2112.

Thus, the disclosure of Song et al. anticipates claims 48-53, 57 and 58 of the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 48-53, 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Song et al. in view of Jackson et al. (European Patent Publication No. 255,260, cited in PTO-892) and Kabbani et al. (US Patent No. 6,646,121, cited in PTO-892).

Song et al. teaches as discussed above.

Song et al. does not expressly disclose the physical property limitations including average particle size (instant claims 49-52), moisture content (instant claim 49, 51), shape (instant claim 51).

Jackson et al. teaches that sucralose has been solidified by freeze drying to obtain a solid powder form (p.1, second paragraph). Jackson et al. also teaches sucralose can be crystallized to obtain anhydrous products that are stable and inert (p.1, third paragraph). However, Jackson et al. teaches that the crystalline sucralose changes color relatively quickly under storage (p.1, third paragraph to p.2, first paragraph). Jackson et al. teaches that reducing the particle size and limiting the distribution to 5 to 10 microns for dry sucralose enhances the thermal stability of the compound (p.2, second paragraph).

Kabbani et al. teaches sucralose having a residual moisture content between about 0.5 to about 2% by weight (claim 3). Kabbani et al. teaches that dry product stability is proportional to residual moisture content (column 7, lines 48-51). Kabbani et al. teaches that moisture content exhibits the largest influence upon product stability (column 7, lines 48-51).

It would have been obvious at the time the invention was made to obtain a solid powder form of sucralose having a particle size of between 5 to 10 microns and a residual moisture content between about 0.5 and to about 2% by weight.

MPEP 2141 states, "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must

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be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" KSR, 550 U.S. at ,82 USPQ2d at 1396. Exemplary rationales that may support a conclusion of obviousness include: (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) " Obvious to try " choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention."

Based on the teachings of the MPEP and KSR above, by employing the rationale in (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention; one having ordinary skill in the art would have been motivated to obtain a solid powder form of sucralose having a particle size of between 5 to 10 microns and a residual moisture content between about 0.5 and to about 2% by weight. From Song et al. and Jackson, one having ordinary skill in the art

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would know that sucralose can be dried directly. Furthermore, one having ordinary skill in the art would know from the Jackson reference that the moisture content and size of the particles is extremely critical to the stability of the product and would be motivated to reduce the particle size to between 5 to 10 microns. And from the Kabbani et al. reference, one of ordinary skill in the art would specifically know that a residual moisture content of about 0.5 to about 2.0% by weight is also extremely critical to the stability of the sucralose compound. Therefore, it appears that in addition to the form of the product like a solid powder form, which allows for easy manipulation into food products such as gum, one having ordinary skill in the art would be motivated to produce a sucralose having a specific particle size and moisture content in order to improve its long-term stability.

Thus, the claimed invention as a whole is *prima facie* obvious over the combined teaching of the prior art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated

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by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 48-53, 57 and 58 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 8 and 9 of copending Application No. 12/225378. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 2 of the '378 application is drawn to a solid amorphous sucralose having a particle size of about 3 microns. Claim 9 of the '378 application is drawn to a consumable composition containing the amorphous sucralose. Claim 1 of the '378

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application is drawn to a crystalline sucralose having a particle size of about 5 microns, and claim 8 is drawn to a consumable product containing said crystalline sucralose.

The claims of the '378 application do not expressly disclose the moisture content of the compounds.

The specification of the '378 application teaches the moisture content of crystalline sucralose is 0.17% to 0.73% (p.27, table 1), 0.18% to 0.70% (p.27, table 2) and 0.20% to 1.10% (p.28, table 3). The specification of the '378 application teaches the moisture content of amorphous sucralose is about 0.05% (p.29, table 5).

Thus, the claimed invention is *prima facie* obvious over the '378 application.

This is a provisional obviousness-type double patenting rejection.

Conclusion

In view of the rejections to the pending claims set forth above, no claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. BAHAR SCHMIDTMANN whose telephone number is 571-270-1326. The examiner can normally be reached on Mon-Thurs 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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